

REMARKS

Applicants have hereby filed an RCE to further the prosecution even though it is believed that the previous final rejection by the Examiner was improper. Contrary to the Examiner's assertion, the previous amendment did not require new grounds for rejection. The previous amendment does further set forth particular connections of the claimed inventive fitment, but did not in any way change or alter the function of the notch and the fitment as claimed.

In addition, the combination of Bennett and Sato et al. would not result in a fitment attached to a pump cartridge function in any manner which is claimed. Sato et al. teaches a rotary pump with a collection bag having an input aspiration line for depositing aspirant from a surgical site and a separate air vent connected to the collection bag (see FIGs. 4 and 11). The air vent of Sato et al. allows atmospheric air to always be pulled into the collection bag and therefore, no pressure differential exists between the interior of the collection bag and atmosphere. Therefore, the structure of a fitment connecting the aspiration line to collection bag is irrelevant for providing a sufficient amount of air in the bag to air vent an aspiration path. Furthermore, Bennett is non-analogous art to the present invention. The improper combination of Bennett with Sato et al. is clearly illustrated in the teachings of Bennett which is directed to the filtering of body fluids and especially blood and not to air venting an aspiration path.

Claim 1 has further been amended in the present RCE to further distinguish the present invention from the prior art, and to clearly illustrate the non-analogous nature of Bennett. Specially, claim 1 has been amended to claim an ophthalmic aspiration collection bag with the fitment connected to an ophthalmic pump cartridge, wherein the

notch allows the surgeon to air vent an aspiration path during surgery to prevent collapse of an eye of a patient. One skilled in the art would not have considered Bennett when trying to ensure the collection bag of an ophthalmic pump cartridge would have sufficient amount of air to allow the aspirant path to be air vented during surgery.

One skilled in the art would not consider Bennett to teach air venting in any manner. This is because the notched outlet of Bennett is just that, an outlet, wherein in the present invention, the fitment with the inventive notch is generally connected to an input line. The fitment only acts as an outlet for a brief period of time to allow air venting. The teaching of Bennett indicates that the notch of the outlet 21 ensures that fluid is always taken out from the fluid surface portion, column 3, lines 22 – 24. This removal of the fluid from the top of the bag is essential in Bennett to prevent fluid from being pulled out of the bag which contains the fibrin precipitate which is to be filtered out and which collects on the bottom of the bag.

There is no teaching in Sato et al. regarding devices or the need for ensuring that a sufficient amount of air remains in the collection bag, because the filter of Sato et al. ensures that the interior of the bag is at the same pressure as atmosphere. Similarly, there is no teaching in Bennett to provide a device to ensure that a sufficient amount of air remains within the collection bag to vent an aspiration path, rather, the teaching of Bennett teaches that no air should be allowed in the bag so that fluid is removed from the top portion of the fluid to ensure that unwanted precipitate remains within the bag and is thereby filtered by the apparatus of Bennett.

One skilled in the art simply would not have even considered Bennett let alone, be lead to the present invention by Bennett or Sato et al. or the combination of Bennett and Sato et al.

As the C.C.P.A. has stated:

In resolving the question of obviousness under 35 U.S.C. §103, we presume full knowledge by the inventor of all prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved.

In re Wood, 599 F.2d 1032, 202 USPQ 171, 174 (C.C.P.A. 1979)

The Federal Circuit has further said

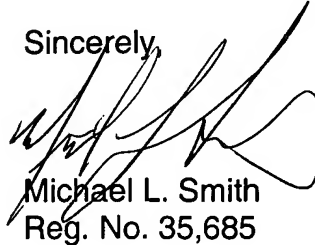
A reference is reasonably pertinent if . . . it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. . . . If a referenced disclosure has the same purpose of the claimed invention, the reference relates to the same problem. . . . [I] it is directed to a different purpose, the inventor would accordingly have less motivation or occasion to consider it.

In re Clay, 966 F.2 656, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992)

In the present case, the field of endeavor of Bennett is different from that of the present invention. Bennett is directed to a blood filtering apparatus and the present invention is related to a fitment for attachment to an ophthalmic aspiration collection bag to provide sufficient air for air venting during surgery to prevent collapse of an eye. Therefore, as the C.C.P.A. and the Federal Circuit have stated, such a reference by Bennett would not have been considered by one skilled in the art of ophthalmic aspiration collection bags because the purpose of the present invention and the purpose of Bennett are completely different.

Therefore, it is respectfully submitted that currently pending claims 1 – 4 are
condition for allowance, and such allowance is requested at an early date.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Smith", is written over the typed name and registration number.

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Reg. No. 35,685

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